ORIGINAL (2)

Supreme Court, U.S.
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No. 03-920

IN THE SUPREME COURT OF THE UNITED STATES

PHIL CRAWFORD, INTERIM FIELD OFFICE DIRECTOR, SEATTLE, WASHINGTON, UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT, ET AL., *Petitioners*

v.

GILBERTO MARTINEZ-VAZQUEZ, *Respondent*

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RESPONSE BY RESPONDENT TO PETITION FOR A WRIT OF *CERTIORARI*

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QUESTION PRESENTED FOR REVIEW

1. In *Zadvydas v. Davis,* 533 U.S. 678 (2001), this Court found that the government did not have the authority to indefinitely detain a person who had been ordered removed, but whose removal was not going to be effectuated in the reasonably foreseeable future. This Court interpreted 8 U.S.C. § 1231(a)(6) to limit the government's authority to detain an alien whose removal was not reasonably foreseeable to a "reasonable time." Although the case before this Court involved resident aliens, this Court did not limit the applicability of this statutory interpretation to resident aliens. Rather, this Court recognized that 8 U.S.C. § 1231(a)(6) applies to both former resident aliens as well as arriving aliens. This case involves a Mariel Cuban, Gilberto Martinez-Vazquez, who had been paroled into the United States in 1980, who had been ordered removed to Cuba in 1993, and who then ultimately ended up back in immigration custody in October 2001 to await removal to Cuba pursuant to the 1993 removal order.

Whether this Court's interpretation in *Zadvydas v. Davis* of 8 U.S.C. § 1231(a)(6), a statute which draws no distinction between individuals who are removable on grounds of inadmissibility and those removable on grounds of deportability, should be applied to and ultimately compel the release of an arriving alien who has been ordered removed but who is unlikely to be removed in the reasonably foreseeable future.

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OPINIONS BELOW

The petition for *certiorari* correctly cites to the reported Court of Appeals opinion and the three unreported district court orders below. App. A-D to Pet. for Cert. 1a-22a.

STATUTORY, REGULATORY AND CONSTITUTIONAL PROVISIONS INVOLVED IN THE CASE

The petition for *certiorari* correctly cites the statutory and regulatory provisions involved in the case, 8 U.S.C. § 1231(a)(6), 8 C.F.R. § 241.4, and § 1231(a)(2). Pet. for Cert. 4-6.

STATEMENT

The lower court opinions correctly set forth the facts of the case and the procedural background. Pet. for Cert. 1a-22a.

By writ of habeas corpus, Mr. Martinez-Vazquez challenged on statutory and federal constitutional grounds his ongoing detention by the immigration service because his removal

order cannot be effectuated in the reasonably foreseeable future, if ever. Both of the lower courts ultimately ruled in Mr. Martinez-Vazquez's favor. App. A to Pet. for Cert. 1a-10a; App. B to Pet. for Cert. 11a-12a; App. C to Pet. for Cert. 13a-15a. The Court of Appeals affirmed the grant of Mr. Martinez-Vazquez's writ of habeas corpus based on this Court's decision in *Zadvydas v. Davis,* 533 U.S. 678 (2001), and the circuit's decision in *Lin Guo Xi v. INS,* 298 F.3d 832 (9th Cir. 2002). App. A to Pet. for Cert. 1a-10a. Since the Ninth Circuit's decision in this case, this Court has granted *certiorari* in a similar case, *Benitez v. Wallis,* 337 F.3d 1289 (11th Cir. 2003), *cert. granted,* 2004 WL 67860 (U.S. Jan. 16, 2004) (No. 03-7434), which raises the same issue as in this case. In light of the grant of *certiorari* in *Benitez,* Mr. Martinez-Vazquez waives his right to file a Brief in Opposition. Mr. Martinez-Vazquez does not thereby waive any objections to the government's recitation of the facts which are either inaccurately stated in, or omitted from, the petition for *certiorari.*

ARGUMENT

The question presented in this case is whether the government, pursuant to 8 U.S.C. § 1231(a)(6), and in light of this Court's statutory interpretation in *Zadvydas v. Davis,* 533 U.S. 678, is compelled to release an arriving alien who has a final order of removal and who will not be removed within the reasonably foreseeable future. This same issue is presented in *Benitez v. Wallis,* 337 F.3d 1289 (11th Cir. 2003), *cert. granted,* 2004 WL 67860 (U.S. Jan. 16, 2004) (No. 03-7434), in which the Court granted *certiorari* review on January 16, 2004.

Accordingly, Mr. Martinez-Vazquez does not waive any objections to the government's recitation of the proper legal analysis in Mr. Martinez-Vazquez's case. He nevertheless agrees with the government that consideration of the government's petition in this case should be held

pending the Court's decision in *Benitez*.

CONCLUSION

The government's petition for *certiorari* should be held pending this Court's decision in *Benitez v. Wallis*, No. 03-7434, and then disposed of as appropriate in light of the decision in that case.

Respectfully submitted,

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January 26, 2004